

MINUTES
ZONING BOARD OF ADJUSTMENT
TOWN OF PETERBOROUGH
Monday, January 4, 2010 – 7:00pm
1 Grove Street, Peterborough, New Hampshire

Present: Chair Matt Waitkins, Maude Salinger, Alice Briggs, Vice Chair Loretta Laurenitis, Jim Stewart, Tricia Cravedi, Peter Leishman

Also Present: Tom Weeks, Code Enforcement Officer; Nicole MacStay, Assistant to the Town Administrator

Chair Waitkins called the meeting to order at 7:00pm and read the notice:

Case No. 1150 Randy Brown for Glenn Brown Jr. Special Exception to Article III, §245-15E(2) of the Peterborough Zoning Ordinance. Applicant requests the Board's approval to retain a driveway with two wetland crossings for access to a proposed single family dwelling within the Wetland Protection District on property located at 248 Carley Road, Parcel No. R006-001-000 in the Rural District. Ms. Salinger said that she is concerned that as the notice was written it implies that the single family dwelling is in the Wetlands Protection District. Mr. Weeks said that the dwelling is not in the district.

Motion:

Mr. Waitkins made a motion to modify the notice to read "...to retain a driveway with two wetlands crossings within the Wetland Protection District for access to a proposed single family dwelling located at..." Ms. Briggs seconded.

Vote:

Mr. Waitkins, Ms. Briggs, Ms. Salinger, Ms. Laurenitis and Mr. Stewart voted in favor of the motion; the motion carried.

Aaron Wechsler of Aspen Environmental spoke for the applicant, saying that they are proposing a two lot subdivision. There is an area in the back of the lot that is suitable for a building and a septic system. There is a driveway that is already in place, and by doing some delineation work on the property they have determined the area of least impact. He and Mr. Brown have already gone to the Conservation Commission and done a site walk where some restoration work is being done. There is about 4,617 square feet of wetlands impact total on the property; the applicant is only proposing to keep 2,180 square feet. There are three crossings now, and they are only proposing to keep two. Some fill was pushed into a wetland area before the delineation was done, which will be removed. Mr. Wechsler then walked the Board through the wetlands delineation and pointed out the location of the old logging road that is being used as the access to the site and the three crossings in question and where the turnouts will be located. He assured the Board that the turnouts were not within the wetlands.

Mr. Weeks asked if there are any wetlands within fifty feet of the disturbance at the housing lot. Mr. Wechsler said that there is not, and the area is already the site of a clearing. Ms. Salinger asked how this site was determined to be the area of least impact. Mr. Wechsler replied that he completed a site assessment wherein he looked for an area that was better suited, but ultimately determined that this location is the least impacting alternative. Francie Von Mertens, speaking for the Conservation

Commission, said that the Commission members asked all the same questions. They went to the site and asked if they started the project from scratch where would they locate the driveway, given that this is not a blank slate, and the subdivision lines needed to be drawn around the superfund site. She described the site as a forested wetlands with an existing logging road. The Commission recommended the restoration of the unnecessary crossing. They determined that the second area of impact that is before the Board is necessary because the land is lowland with the exception of the proposed house site. With the restoration of the second crossing, the Commission felt they could recommend this proposal. Chair Salinger asked if the Commission found a better route. Ms. Von Mertens said that at one time there may have been a better route, but that must be weighed against the impact of restoring the old route. There may have been a shorter route, but that would not necessarily have been the route of least impact. Ms. Von Mertens added that "restoration" is a tidier word than the reality; big machinery has to go in to the site to complete the work which has impact of its own. She did not believe that anything was done with bad intentions, and that there was logic in placing the driveway where it is. Some restoration will be done, and an existing crossing and culvert will be removed, which helped the Commission compensate for the negative impact of not securing the proper permitting before commencing. Ms. Salinger asked how the utilities will be brought to the site. Ms. Von Mertens said that the Commission did not address that with the applicant, but she felt that it should be made clear.

Chair Waitkins asked if anyone wanted to speak in favor of the proposal. Ms. Von Mertens reiterated the Conservation Commission's recommendation, though they are still waiting to hear from the Wetlands Bureau, and would like to know more about the placement of the utilities. Ms. Laurenitis asked what the applicant could tell the Board about the utilities. Mr. Brown said that they intend to bring the utilities in by telephone pole. However finding the best location for those poles will be difficult. Mr. Wechsler said that depending on Mr. Brown's wishes, it may be possible to bring in the power from the existing house lot, across the existing second wetlands crossing to the proposed house site, which would not require any wetlands impact. Mr. Weeks asked if there would be any impact within fifty feet of the wetlands. Mr. Wechsler said that he would have to check the distances, the only concern being the setback to the surface water near the lagoons.

The Board discussed at length whether it would be prudent to continue the hearing until after decision from DES is received, or if they had enough information to deliberate and could proceed.

Motion:

Ms. Briggs made a motion to continue the hearing, pending the Department of Environmental Services decision; Mr. Stewart seconded.

Vote:

Ms. Briggs voted in favor of the motion, Ms. Salinger, Mr. Stewart, Chair Waitkins and Ms. Laurenitis voted in opposition; the motion failed.

Chair Waitkins closed the public hearing at 8:48pm and opened deliberations. There followed and extended discussion of the proposed location of the driveway and the required passing zone near Crossing 2.

Motion:

In a motion made/seconded (Waitkins/Briggs) in **Case No. 1150 Randy Brown for Glenn Brown Jr.** request for a Special Exception to Article III, §245-15E(2) of the Peterborough Zoning Ordinance in which the Applicant requests the Board's approval to retain a driveway with two

wetland crossings within the Wetland Protection District for access to a proposed single family dwelling located at 248 Carley Road, Parcel No. R006-001-000 in the Rural District is hereby GRANTED.

The Board finds:

1. The proposed driveway is essential to access the productive use of the land that is not within the Wetlands Protection District. Testimony from the Conservation Commission and the Certified Wetlands Scientist assert that the proposed building envelope is outside of the Wetlands Protection District.
2. The proposed driveway will be located and constructed as to minimize the detrimental impact of the use upon the Wetlands Protection District. The Conservation Commission found that the location shown on plan "Wetland Permitting and Restoration Plan" dated 12/11/09 was the route that had the least impact on the Wetlands Protection District, given that the driveway had been primarily constructed over a pre-existing logging road and the applicant agreed to wetlands mitigation and restoration.
3. No better alternative route exists to access the proposed dwelling. A significant portion of the road frontage not yet built upon is wetland and access is constrained by the Groundwater Monitoring Zone, test wells, lagoons and the Shoreland Conservation Zone.

The Board imposes the following conditions:

1. The applicant must receive a DES Wetlands Bureau Dredge and Fill Permit for the submitted plan, "Wetland Permitting and Restoration Plan" dated 12/11/09 and comply with any revisions required by DES.
2. A copy of the DES approved plan must be submitted for inclusion in this case file.
3. Any increase in width to the driveway shown on the plan must not impact the jurisdictional wetland.
4. The driveway shall be constructed in substantial compliance with the plan submitted to the Board. The applicant shall be permitted to construct a passing lane not shown on the submitted plan dated 12/11/09 in conformance with the Town's driveway standards, provided that there are no further encroachments into the jurisdictional wetlands.
5. The applicant will complete restoration of wetlands as shown on the plan dated 12/11/09.
6. The driveway shall not be paved.

Vote:

Chair Waitkins, Ms. Briggs, Ms. Salinger, Mr. Stewart and Ms. Laurenitis voted in favor of the motion; the motion carried.

As there was no further business, the meeting adjourned at 9:45pm.

Respectfully Submitted,

Nicole MacStay, Assistant to the Town Administrator